IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
REVIEW PETITION NO.2 OF 2005
IN
LETTERS PATENT APPEAL NO.247 OF 2002
IN
WRIT PETITION NO.3328 OF 2002

Sanjay Krishna Gaikwad. .. Petitioner (Org.Appellant)

Vs.

The Secretary & Ors. .. Respondents

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Shri Madhav Jamdar for the petitioner.

Shri R.M.Patne, AGP for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR &
ANOOP V.MOHTA, JJ.

DATED : 16TH SEPTEMBER, 2005.

(In Chamber at 2.35 p.m.)

P.C.

1. Heard. Drawing attention to the decisions of the Apex Court in the matter of **Srinivasiah v. Balaji Krishna Hardware Stores,** reported in AIR 1999 SC 462 and **Kusum Lata v. State of Haryana & Ors.,** reported in AIR 2002 SC 2790, the learned Advocate appearing for the applicant submitted that failure on the part of the Court to take into consideration the resolution passed by the Karnataka University declaring that the

degree obtained by the Applicant at the post graduation level, though did not disclose the subject of Zoology but infact the training and expertise gained by the applicant in the said course, is equivalent to the one in the subject of Zoology. Plain reading of the order dated 17th June, 2005 passed by this Court apparently discloses that no such argument was ever canvassed in the matter. The challenge therein was only on two grounds which clearly enumerated in the paragraph (3) of the order dated 17th June, 2005. The contentions sought to be raised in the matter do not disclose any error apparent on the face of record which could justify the review of the said order.

2. As regards the decision of the Apex Court in **Srinivasiah's case (supra),** there was a clear finding by the Rent Controller as well as the Appellate Authority that the accommodation was in the nature of a godown. However, as the same was not brought to the notice of the Apex Court during the course of arguments, the Apex Court proceeded to dispose of the matter on the assumption that the said accommodation was in the nature of a shop. Considering the same, the Apex Court had allowed the review petition. The observations in the paragraph 8 of the said decision

read as under:-

> "8. The judgment rendered by us in the Civil Appeal proceeded on the assumption that the said available accommodation was in the nature of shop. This assumption, as shown above, was not correct. The findings of the Rent Controller or the Appellate authority above set out that this accommodation was in the nature of a 'godown' were not brought to our notice as the concerned judgments were not filed in the paper book. There is, threfore, ample justification for interference in our review jurisdiction. We accordingly accept the finding of the said tribunals and hold that the objection raised by the tenant cannot be sustained."

3. As regards the decision of the Apex Court in **Kusum Lata's case (supra),** it was not the case of review but it was on the merits wherein the question which arose before the Apex Court was regarding the eligibility of the appellant before the Apex Court who was seeking admission to the Diploma Course in Education and the point was related to interpretation of the clause prescribing eligibility criteria. Being

so, the decision in **Kusum Lata's case** is of no help to justify the contention on behalf of the applicant regarding the need for review of the order dated 17th June, 2005.

4. In any case, in **Kusum Lata's case,** the eligibility conditions specifically provided that the candidates should have passed 10 + 2 examination from the Board of School Education, Haryana, or its equivalent examination from any other Board, recognised by Board of School Education, Haryana, with at least 50% aggregate marks. Undisputedly, the advertisement, which was issued by Shivaji University, required the qualification in M.Sc. in Zoology and not any equivalent qualification in any other course which could disclose training in Zoology course at the post graduation level.

5. For the reasons stated above, therefore, in the absence of any error on the face of record of the Court, the question of entertaining the review petition does not arise. Hence, the same is rejected with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(ANOOP V.MOHTA, J)